

1 BEFORE THE TENNESSEE REGULATORY AUTHORITY
2 NASHVILLE TENNESSEE
REGULATORY AUTH.

3 '02 FEB 11 PM 3 07

4 OFFICE OF THE
5 EXECUTIVE SECRETARY

6 IN RE: COMPLAINT OF XS TENNESSEE, INC.
7 AGAINST BELLSOUTH TELECOMMUNICATIONS,
8 INC.

DOCKET NO. 01-00868

9 COMPLAINT OF ACCESS INEGRATED
10 NETWORKS, INC. AGAINST BELLSOUTH
11 TELECOMMUNICATIONS, INC.

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15 Deposition of:

16 RICHARD TICE

17 Taken on behalf of ITC^DELTACOM

18 January 16, 2002
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21
22 VOWELL & JENNINGS, INC.
23 Court Reporting Services
24 328 Washington Square Building
25 222 Second Avenue North
Nashville, Tennessee 37201
(615) 256-1935

1 **APPEARANCES:**

2 FOR ITC^DELTACOM:

3 HENRY WALKER
4 Attorney at Law
5 Nashville, Tennessee

6 and

7 NANETTE EDWARDS
8 Attorney at Law
9 Huntsville, Alabama

10 FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

11 PATRICK TURNER (BY PHONE)
12 Attorney at Law
13 Atlanta, Georgia

14 FOR THE OFFICE OF THE STATE ATTORNEY GENERAL:

15 CHRIS ALLEN
16 Attorney at Law
17 Nashville, Tennessee

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I N D E X

WITNESS:

RICHARD TICE

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1 The deposition of RICK TICE,
2 taken on behalf of ITC^DELTACOM, on the 16th
3 day of January, 2002, in the offices of Boulton,
4 Cummings, Conners & Berry, Suite 1500, 414
5 Union Street, Nashville, Tennessee, for all
6 purposes under the Tennessee
7 Rules of Civil Procedure.

8 The formalities as to notice,
9 caption, certificate, et cetera, are waived. All
10 objections, except as to the form of the
11 questions, are reserved to the hearing.

12 It is agreed that James L. Vowell,
13 being a Notary Public and Court Reporter for the
14 State of Tennessee, may swear the witness, and
15 that the reading and signing of the completed
16 deposition by the witness are waived.

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19 * * *

20

21 RICHARD TICE
22 was called as a witness, and after having been
23 first duly sworn, testified follows:

24

25

1 MR. ALLEN: Jim, Dr. Steve Brown
2 will be sitting in, as well as Mark Crocker.

3 EXAMINATION

4 BY MR. WALKER:

5 Q. Mr. Tice, my name is Henry Walker.
6 Would you state your name please and what your
7 current job title is?

8 A. My name is Richard Tice and I'm
9 president of BellSouth Select, Inc.

10 Q. So as of today, you are still the
11 president of BellSouth Select, Inc.?

12 A. That's correct.

13 Q. How long have you held that position?

14 A. I believe it's since February of '99,
15 if I recall correctly.

16 Q. Was there a president of BellSouth
17 Select before you?

18 A. Yes.

19 Q. Who was that?

20 A. That would have been William Pate.

21 Q. What did you do before you became
22 president of BellSouth Select?

23 A. I was vice president of BellSouth
24 Select.

25 Q. And what did you do before that?

1 A. I was director in BellSouth Marketing.
2 Q. Just director? Could you give me a
3 description of your job as director in
4 BellSouth Marketing?
5 A. I was charged with operating the
6 BellSouth credit card program.
7 Q. Okay. Was that all?
8 A. Yes, on that job.
9 Q. How long have you been employed by
10 BellSouth or a BellSouth affiliate?
11 A. Twenty-nine years.
12 Q. Now, just to clarify, I had understood
13 that, in fact, there was now a new person in
14 charge of BellSouth Select, Inc. That was
15 incorrect?
16 A. That's incorrect. I'm transitioning to
17 a new job in BellSouth corporate advertising
18 located in Birmingham, Alabama, but I'm still
19 currently president of BellSouth Select, Inc.
20 Q. When will that transition occur?
21 A. It hasn't been definite yet as to the
22 time line.
23 Q. When did you find out about this?
24 A. I'm sorry?
25 Q. When did you first learn of this

1 transition to a new job?

2 A. It was about a week before Christmas.

3 Q. And briefly describe what your new job

4 will involve and what your new title will be.

5 A. My new title will be director/

6 advertising, BellSouth Corporation, and my new

7 job will be handling marketing communications

8 for the consumer market for BellSouth

9 Advertising.

10 Q. When you say for BellSouth Advertising,

11 is that BAPCO?

12 A. BellSouth Corporation.

13 Q. Okay. Will that be at the same salary

14 or a higher salary or a lower salary than you

15 now get?

16 A. It's the same salary.

17 Q. Will you be moving to a new location

18 physically?

19 A. My office will be moving to a new

20 location. My residence will not. This

21 transfer was at my request.

22 Q. Where is your residence now?

23 A. My residence is 408 Lakeshore Drive,

24 Cropwell, Alabama 35054.

25 Q. Where is your office now?

1 A. My office is at 3535 Colonnade Parkway,
2 Birmingham, Alabama, and I also have an office
3 at Lennox Park in Atlanta, Georgia.

4 Q. Where do you spend most of your time,
5 Atlanta or Birmingham?

6 A. Birmingham.

7 Q. After you assume your new duties where
8 will your office be?

9 A. Birmingham.

10 Q. Will you also have an office in Atlanta
11 in your new job?

12 A. No.

13 Q. Why did you request to be transferred?

14 A. My home is in Cropwell, I have two
15 sons, three grandchildren over there, a wife
16 over there, and I requested to be transferred
17 to Alabama for family reasons.

18 Q. Who will succeed you as president of
19 BellSouth Select?

20 A. I don't know.

21 Q. Mr. Tice, have you lost any benefits or
22 bonuses or failed to receive any benefits or
23 bonuses as a result of these complaints that
24 have been filed about the BellSouth Select
25 program?

1 A. No.

2 Q. Are you aware that other people have
3 failed to receive benefits or bonuses as a
4 result of these complaints?

5 A. No.

6 Q. You are not aware that Mr. Livingston
7 has failed to receive benefits or bonuses
8 because of his involvement in this program?

9 A. No.

10 Q. Describe briefly, if you will, the
11 development of the BellSouth Select program
12 which, combined with the Key Customer discount
13 program, allowed customers to get one, two or
14 three months free service. And when I say
15 describe the development, I'd like to know from
16 whom the idea originated, when you first heard
17 about, it and who was involved in the
18 development of the program itself.

19 A. The program that you're referring to,
20 the Key Customer and the customer receiving
21 select points which were not intended to be
22 free service, was proposed to us by Small
23 Business during a Select Program team meeting.

24 Q. If at all possible, I'd like you to
25 attach some names to that.

1 When you say "proposed to us by Small
2 Business," who are you talking about?
3 A. The representative from Small Business
4 would have been Scott Johnson.
5 Q. Anyone else?
6 A. No.
7 Q. To whom did he make that proposal?
8 A. He made that proposal to the program
9 team, which would have been my staff and the
10 staff from our vendor Carlson Marketing.
11 Q. And when did he make that proposal?
12 A. I don't recall the exact date. I would
13 have to go back and look through notes. But it
14 would have been shortly before they rolled it
15 out.
16 Q. Do you know when the program was rolled
17 out?
18 A. I don't remember the exact date. I
19 would have to go back and look through the
20 notes.
21 Q. I'd like the approximate date.
22 A. It was in the fall of last year, wasn't
23 it?
24 Q. There was some testimony that you did
25 this program on a trial basis in Memphis back

1 in May of last year. Does that refresh your
2 recollection?

3 A. Yes.

4 Q. Now that I've refreshed your
5 recollection, when do you think the program was
6 rolled out?

7 A. Well, according to what you just said,
8 it would have been rolled out on a trial basis
9 in May.

10 Q. But you don't have any independent
11 knowledge of that?

12 A. No.

13 Q. When did you first learn of this
14 program?

15 A. It would have been about that time.

16 Q. When it was rolled out?

17 A. Right before it was rolled out.

18 Q. Okay. Are you aware of any documents
19 that discuss whether or not this program was
20 consistent with the State regulatory
21 requirements? And I'm limiting my question to
22 are you aware of any documents that discuss
23 whether this program is consistent with State
24 regulatory requirements?

25 MR. TURNER: Henry, this offering

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1 being the one that was characterized as free
2 service?

3 MR. WALKER: The one we've just
4 been discussing, that's correct.

5 THE WITNESS: No.

6 BY MR. WALKER:

7 Q. You're aware of no such documents?

8 A. No, I'm not familiar with State
9 regulatory requirements.

10 Q. Now listen to my question: Are you
11 aware of any documents which discuss that
12 issue?

13 A. And my answer, no.

14 Q. Okay, thank you.

15 Do you recall any conversations in
16 which you participated, any conversations
17 discussing whether or not that program was
18 consistent with State regulatory requirements?

19 A. Yes.

20 Q. I want you to identify each such
21 conversation that you can recall, and tell me
22 with whom you had this conversation. I'm not
23 asking for the substance, I just want to know
24 when the conversation occurs and with whom you
25 had it.

1 A. There was a group conversation with the
2 program team, including Scott Johnson from
3 Small Business Services.

4 Q. When did that occur?

5 A. It would have occurred shortly before
6 the second rollout of the program.

7 Q. When was that approximately?

8 A. It would have been early fall of 2001.

9 Q. Were you involved in that conversation?

10 A. Yes.

11 Q. Who else?

12 A. It would have been myself and the
13 members of my staff.

14 Q. Would you identify them, please?

15 A. It would have been Beverly Holyfield,
16 Jeffery White, Daisy Whiting. There would have
17 been some members from our vendor on the
18 conference call probably, and I don't recall
19 who all would have been there from the vendors.
20 And then from Small Business I do recall Scott
21 Johnson would have been participating.

22 Q. Anyone else?

23 A. Not to my knowledge.

24 Q. Did you or any member of your staff
25 take notes of that conference call?

1 A. We had program team meetings, but I
2 don't think it would have necessarily involved
3 that conference call or that conversation.

4 Q. Isn't it customary within BellSouth for
5 someone to be taking notes of a conference call
6 like that?

7 A. No.

8 Q. Were there any attorneys on the call?

9 A. No.

10 Q. Tell me, as best you can recollect,
11 recall, the substance of that call as it
12 relates to regulatory requirements.

13 A. There was no substance as far as
14 regulatory requirements.

15 Q. Well, my original question was did you
16 recall any conversations in which there was a
17 discussion about whether or not this program
18 was consistent with State regulatory
19 requirements. And I thought you said yes, and
20 then identified that conversation. Did I
21 misunderstand?

22 A. Yes.

23 Q. What was the subject of that
24 conversation?

25 A. The subject of the conversation was,

1 was it okay for Small Business to do this
2 program in light of the fact that BellSouth had
3 suspended win-back activities for some time
4 prior to that in all nine states.

5 Q. Okay.

6 A. And we questioned Small Business as to
7 was it okay to continue this program. And they
8 assured us that it was.

9 Q. And that would have been Mr. Johnson?

10 A. Would have been Mr. Johnson, and that
11 was the extent of the conversation.

12 Q. Thanks, I appreciate that
13 clarification.

14 A. You're welcome.

15 Q. Mr. Tice, did you ever raise a concern
16 or did -- or to your knowledge, did anyone on
17 your staff ever raise a concern as to whether
18 this particular program which allowed customers
19 to receive bonus points equal to one, two or
20 three months free service, was consistent with
21 State regulatory requirements?

22 A. No, not to my knowledge.

23 Q. To your knowledge, did anyone in your
24 organization review this program to determine
25 that it was consistent with State regulatory

1 requirements?

2 A. No. It's not my responsibility to
3 review those type of requirements.

4 Q. Whose responsibility is it?

5 A. It would have been BellSouth
6 Telecommunications, Small Business.

7 Q. So in other words if Small Business
8 presents you with a marketing idea, as they did
9 in this case, it's their responsibility to
10 determine ahead of time that it's consistent
11 with State regulatory requirements?

12 A. Are you asking me a question or making
13 a statement?

14 Q.. I'm asking a question, and I guess I'm
15 asking you to confirm my understanding.

16 A. That would be my assumption, yes.

17 Q. What's that assumption based on? I'm
18 sorry, I meant to put a period behind that.

19 What's the assumption based on?

20 A. BellSouth Select is an unregulated
21 subsidiary of BellSouth Corporation. I have no
22 way of knowing the State regulatory
23 requirements for BellSouth Telecommunications,
24 so it would be their responsibility to assure
25 me, BellSouth Select, that what they asked us

1 to do met those requirements.

2 Q. You mentioned that you were formerly
3 involved in BellSouth Marketing.

4 Have you ever been involved in the
5 marketing of regulated telecommunications
6 services?

7 I'm sorry. Did you hear me?

8 MR. TURNER: He said yes, Henry.

9 MR. WALKER: I apologize, I didn't
10 hear the answer.

11 BY MR. WALKER:

12 Q. At what period in your career with
13 BellSouth, Mr. Tice, were you involved in the
14 marketing of regulated services, and briefly
15 describe what your duties were at that time.

16 A. I was involved with regulated services,
17 marketing regulated services probably from 1983
18 until 1995. I was product manager for
19 BellSouth calling card product as well as
20 BellSouth's line information database, acronym
21 is LIDB, L-I-D-B, and it's a database service
22 we market to interchange carriers for operator
23 services, bill number screen calls.

24 Q. What about any other regulated
25 services?

1 A. No.

2 Q. Any retail services other than calling
3 cards?

4 A. No.

5 Q. Is the -- to your knowledge, is the
6 BellSouth Select program tariffed in any
7 BellSouth state?

8 A. No.

9 Q. What is your understanding of why it is
10 not tariffed?

11 A. It's an unregulated program operated
12 with unregulated funds, didn't require
13 tariffing.

14 Q. And --

15 MR. TURNER: Henry, you're
16 breaking up.

17 MR. WALKER: No I'm sorry, my
18 mouth was opening and shutting like a drowning
19 fish as I was trying to articulate a question.

20 MR. TURNER: I wish I was there.

21 BY MR. WALKER:

22 Q. Mr. Tice, did anyone ever tell you,
23 that you can recall, that the BellSouth Select
24 program did not need to be tariffed? Or is the
25 answer you just gave me based on your own

1 knowledge and conclusions?

2 A. It was based on the advice of legal
3 counsel.

4 Q. Who would that have been?

5 A. I can't begin to tell you. The lead
6 attorney would have been David Richard at the
7 time.

8 Q. At what time?

9 A. At the time the programs were
10 developed.

11 Q. And for whom did -- where did -- did
12 you say Richards?

13 A. David Richard.

14 Q. An S on that?

15 A. I believe.

16 Q. Do you recall having a conversation
17 with Mr. Richards about whether or not the
18 program needed to be tariffed?

19 MR. TURNER: Henry, I'm going to
20 start drawing a line there on attorney/client
21 communications. You're going beyond basics and
22 asking him about the substance of conversations
23 so I'm going to object and instruct him not to
24 answer.

25 MR. WALKER: I will rephrase the

1 question.

2 BY MR. WALKER:

3 Q. Do you recall having a conversation
4 with Mr. Richards about whether or not
5 BellSouth Select needed to be tariffed? That's
6 intended to be a yes or no question.

7 A. Yes.

8 Q. Do you recall more than one
9 conversation?

10 A. Yes.

11 Q. Do you recall seeing any written
12 documents about that topic from Mr. Richards?

13 MR. TURNER: You can answer.

14 THE WITNESS: Yes.

15 BY MR. WALKER:

16 Q. Now, Mr. Tice, at the beginning of our
17 discussion, I asked you if you were aware of
18 any written documents which discussed whether
19 or not this program was consistent with State
20 regulatory requirements. Your answer at that
21 time was no.

22 In light of the question and answer
23 that we just went through, would you like to
24 clarify that earlier answer?

25 MR. TURNER: Henry, I'm going to

1 object. You may want to ask him if the
2 conversations he had with Mr. Richards were
3 about the offering that were characterized as
4 free service offering which you specifically
5 referenced in your prior question to Mr. Tice.

6 MR. WALKER: Thanks, Patrick.

7 BY MR. WALKER:

8 Q. Mr. Tice, let me ask you again, are you
9 aware of any documents that discuss whether the
10 BellSouth Select program generally meets State
11 regulatory requirements, or not?

12 MR. TURNER: You can answer.

13 THE WITNESS: Yes.

14 BY MR. WALKER:

15 Q. And are these documents from
16 Mr. Richards?

17 A. Yes.

18 Q. Are there any such documents that you
19 are aware of from a nonattorney?

20 A. No.

21 Q. Just a minute, let me review my notes
22 here.

23 Would it be fair to say, Mr. Tice, that
24 these documents and conversations with
25 Mr. Richards would have occurred in 1999 or

1 would they -- correct me if I'm wrong, or did
2 they continue to occur beyond 1999?

3 A. They would have occurred probably in
4 late '98, and no, they did not continue to
5 occur in 1999.

6 Q. What does Mr. Richards do today?

7 A. My understanding is he has transferred
8 to Cingular Wireless as an attorney.

9 Q. Thank you.

10 Do you know, Mr. Tice, approximately
11 how many customers, business customers, are
12 enrolled today in the BellSouth Select program
13 throughout the region?

14 A. Approximately 100,000.

15 Q. In an earlier deposition I think
16 Mr. Livingston estimated that the number, a
17 hundred thousand, was as of November of last
18 year. Is it fair to say that the number has
19 not increased since last November?

20 A. No, it would have increased.

21 Q. Can you -- do you still think it's a
22 hundred thousand or do you want to revise that?

23 A. I believe I said it was approximately a
24 hundred thousand.

25 Q. Is that your best estimate?

1 A. At this moment. The enrolled customers
2 ongoing.

3 Q. At what rate do you enroll customers on
4 an average basis?

5 A. It varies.

6 Q. I'd like to know, as the president of
7 BellSouth Select, the average rate at which you
8 enroll customers.

9 A. I don't know. I would need to go back
10 and look at the reports. I'm not that familiar
11 with the weekly reports. You know, I said it
12 varies depending on weeks. It jumps
13 dramatically.

14 Q. Are you continuing to do outbound
15 telemarketing to potential members of BellSouth
16 Select?

17 MR. TURNER: Henry, given -- I'm
18 going to lay a foundation objection there, you
19 can treat it as you want to, but that you -- I
20 don't know if you mean broadly or third parties
21 or what.

22 MR. WALKER: Thanks for the
23 clarification.

24 BY MR. WALKER:

25 Q. Is there today an ongoing outbound

1 telemarketing campaign to enroll new members in
2 BellSouth Select?

3 MR. TURNER: Same objection,
4 Henry. If you can specify Select, BST, third
5 parties or just in general, I'd appreciate it.

6 BY MR. WALKER:

7 Q. In general. Is there anyone currently
8 engaged in outbound telemarketing today to
9 enroll new members in BellSouth Select? And if
10 so, who is that?

11 A. Not to my knowledge.

12 Q. Okay. When did you suspend outbound
13 telemarketing efforts to enroll people in
14 BellSouth Select?

15 MR. TURNER: Henry, again, I hate
16 to keep doing this, but when you say "you," I
17 mean, there are three or four different
18 entities or channels that have been involved,
19 and if you're specifying just generically,
20 that's one thing. If you want him to go just
21 to Select, that's another. But I would
22 appreciate you clarifying that just because
23 there are other folks involved in other
24 channels have given testimony. I want to make
25 sure we're clear what we're talking about.

1 MR. WALKER: Thank you.

2 BY MR. WALKER:

3 Q. Mr. Tice, describe the ways in which

4 new members come to BellSouth Select.

5 A. When customers call the business

6 office, the accounts are marked that they

7 qualify for membership, and at that time the

8 service representative or account executive

9 would extend an invitation into the program.

10 Q. Now, are we talking about just

11 businesses or business and residential?

12 A. Businesses. I thought we were limiting

13 our conversation to the business program.

14 Q. Yes, we are, and I just want to make

15 that clear.

16 Are there other ways in which members

17 are invited to join?

18 A. Not at this time.

19 Q. When you say "not at this time," please

20 explain that.

21 A. We at one time had a direct mail

22 campaign to invite customers to the program.

23 We have made some outbound calls from time to

24 time to invite customers to the program, but

25 the primary method of invitation is on an

1 inbound basis which customers contact our
2 business office or contact the account
3 executive.

4 Q. What does SBTC stand for?

5 A. I'm not sure. There are so many
6 acronyms in BellSouth. Small Business
7 something.

8 Q. Well, in some of the training
9 materials, I've seen at the top of the page
10 OBTM Win-Back Test. What does OBTM stand for?

11 A. I don't know.

12 Q. Could it be outbound telemarketing?

13 A. I don't know.

14 Q. To your knowledge, when did you -- what
15 was the most recent period of time in which you
16 were doing outbound telemarketing to attract
17 new members to BellSouth Select? And by "you,"
18 I mean you or anybody who acted as your agent.
19 Or anyone within BellSouth or anyone BellSouth
20 hired.

21 A. I don't know.

22 Q. Well, I'm looking at some training
23 materials here for outbound telemarketers and
24 they seem to be dated last year. So were you
25 doing outbound telemarketing last year?

1 MR. TURNER: Henry, again with
2 regard to Select in general or with regard to
3 the combined all claim that's been
4 characterized as free service?
5 BY MR. WALKER:
6 Q. Select in general.
7 A. We probably did some outbound
8 telemarketing tests last year at some time, but
9 again, the primary method for enrolling
10 customers in the Select Program in general has
11 been through an inbound means to the business
12 offices in Small Business.
13 Q. Are customers from all wire centers
14 eligible to join BellSouth Select?
15 A. I don't know the answer to that
16 question.
17 Q. Well, the criteria that I have seen in
18 the documents that you all produced indicated
19 Wire Centers 1 through 505. Is that a criteria
20 for joining BellSouth Select?
21 A. I don't know.
22 Q. Who would know?
23 A. Small Business.
24 Q. Okay. Are they the ones who develop
25 the criteria as to who can join BellSouth

1 Select?

2 A. They and BAPCO and my team.

3 Q. Well, your team is also involved in
4 deciding who can join BellSouth Select?

5 A. We sit down with BellSouth Advertising
6 and Small Business and develop the criteria for
7 membership.

8 Q. Well, then I would think you'd be able
9 to answer the question about eligible wire
10 centers.

11 What does it mean when I see a document
12 that says if you're in Wire Centers 1 through
13 505 you're eligible to join? Would you please
14 explain what that means, to me?

15 A. I don't know.

16 MR. TURNER: Henry, we don't have
17 the document here. You're welcome to fax it
18 and we can let him look at it, but we don't
19 have the document you're talking about.

20 MR. WALKER: I'm just testing his
21 knowledge. He said he was involved in these
22 criteria, but I'm just seeing if he really
23 knows anything about it.

24 MR. TURNER: Well, now, I
25 understand what you're saying, but I think it's

1 fair for me to ask will you fax us the document
2 you're looking at so he can look at it and see
3 if that helps him put things in context.

4 MR. WALKER: I'll save it for the
5 hearing.

6 MR. TURNER: Will you identify the
7 document for the record?

8 MR. WALKER: I'm not going to
9 identify anything. I'm just asking if he knows
10 about limiting membership to certain wire
11 centers, and I guess he doesn't know.

12 MR. TURNER: Well --

13 MR. WALKER: And, Patrick, it's in
14 the pages you sent to me.

15 MR. TURNER: I understand that,
16 Henry. We sent you a bunch of pages, and I
17 didn't object to your asking him in general,
18 but then you went to a specific document that
19 you're looking at that you read from, you asked
20 him about that, and now you refuse to send him
21 the document. So --

22 MR. WALKER: I don't have this
23 document in front of me. I don't intend to
24 spend time now looking it up. I'm going from
25 memory.

1 Q. When did it cease?

2 A. It ceased at the end of 2001.

3 Q. Why?

4 A. The Consumer Marketing organization

5 just didn't see a need to continue the program.

6 Q. And the Consumer Marketing organi-

7 zation, is that within BST?

8 A. That's correct.

9 Q. Are you aware -- how did you find out

10 that the program was to be discontinued?

11 A. From BellSouth Consumer Marketing.

12 Q. Did they call you, send you a letter or

13 an e-mail? How did you find out?

14 A. Through conversations.

15 Q. You've seen nothing in writing about

16 the discontinuance of this program?

17 A. Not to my knowledge.

18 Q. So you don't recall getting anything in

19 writing that this program that's been going on

20 for three years was going to be discontinued

21 December 31st?

22 A. No, it was through conversations.

23 Q. Do you know approximately how many

24 people throughout the region were enrolled in

25 the residential BellSouth Select program?

1 A. Approximately 200,000.

2 Q. Have those people been notified that

3 the program was discontinued?

4 A. No.

5 Q. Will they be notified?

6 A. No.

7 Q. Why not?

8 A. The program is what we refer to as a

9 soft program. Customers actually didn't enroll

10 in the program, we just started communicating

11 to them, and the exit strategy, if we decided

12 not to continue the program, is simply to not

13 communicate the next year that the program is

14 ongoing. The program always said that it was

15 for the calendar year.

16 Q. And was this program operated by

17 BellSouth Select, Inc.?

18 A. Yes.

19 Q. Roughly speaking, would you give me a

20 ball-park comparison of that portion of your

21 budget which was devoted to running the

22 residential BellSouth Select program as

23 compared to that portion of your budget

24 involved in running the BellSouth Select

25 program for small businesses? And I'm just

1 trying to get a ball-park order of magnitude
2 here.

3 MR. TURNER: Are you talking about
4 percentage this, percentage that?

5 MR. WALKER: Exactly. I don't
6 need specific numbers.

7 THE WITNESS: I'm going to take a
8 rough guess, okay?

9 BY MR. WALKER:

10 Q. Sure.

11 A. I would say three-fourths of my budget
12 would be for the Small Business program and
13 one-fourth would be for the residential
14 program.

15 Q. Thanks, I appreciate that. And I
16 recognize that it's just a ball park.

17 Switching back now to the Small
18 Business program, were wholesale customers of
19 BST eligible to join the Select Program?

20 A. I'm sorry, I don't understand what
21 wholesale customers are.

22 Q. A wholesale customer would be another
23 phone company who purchases an access line from
24 BellSouth at a wholesale discount and then
25 resells that line to an end user.

1 A. Are they customers of BellSouth Small
2 Business Services?
3 Q. No, they would be customers of BST's
4 wholesale operations.
5 A. The program was limited to customers --
6 Small Business program was limited to customers
7 of BellSouth Small Business.
8 Q. So it was limited to retail customers,
9 is that your understanding?
10 A. Are retail customers customers of Small
11 Business Services?
12 Q. Well, by retail customers I mean end
13 users.
14 A. The program was limited to consumers of
15 BellSouth's Small Business Services.
16 Q. Do you know what I mean when I use the
17 term "end user"?
18 A. Yes.
19 Q. Were there any members of BellSouth
20 Select other than end users?
21 MR. TURNER: I'm going to object,
22 Henry. I'm going to ask one of you to tell
23 what your understanding of end users is because
24 I have no idea how one of you can know what the
25 other is thinking.

1 MR. WALKER: That's probably a
2 good suggestion.

3 BY MR. WALKER:

4 Q. Mr. Tice, by an "end user," I mean the
5 ultimate consumer of the telecommunications
6 service. You and I, a layman would probably
7 call it the customer, as opposed to an
8 intermediary who might be a wholesaler or a
9 reseller of telecommunication services. So by
10 "end user" I mean somebody who is not a
11 wholesaler or a reseller but the ultimate end
12 user of service.

13 Now, with that definition in mind, were
14 there any resellers or wholesalers who were
15 members of BellSouth Select, to your knowledge?

16 A. Not to my knowledge.

17 Q. Okay. So would it be fair, then, to
18 conclude that to your knowledge no resellers or
19 wholesalers ever received any benefits through
20 the BellSouth Select program, to your
21 knowledge?

22 A. Again, the program was limited to
23 BellSouth Small Business customers.

24 Q. Got it. I think that's good enough.
25 We can go with that.

1 Was Dick Anderson aware of the business
2 of the BellSouth Select organization?

3 A. Yes.

4 Q. Was he aware of the program that was
5 instituted last year that awarded bonus points
6 that could be used for one, two or three months
7 free service?

8 A. I wouldn't know that.

9 Q. How do you know that Mr. Anderson was
10 aware of the existence of the BellSouth Select
11 program, generally speaking? Did you ever talk
12 with him about it or see any documents with his
13 name on them that were sent to him, about the
14 program?

15 A. I've known Mr. Anderson professionally
16 for a number of years, and I had a one- or two-
17 minute conversation with him several months ago
18 at a training function.

19 Q. Describe as best you recall that
20 conversation.

21 A. Personally, I mean, he asked me how I
22 was doing, I was asking him how he was doing,
23 and I think he may have asked me how the
24 program was going and I said fine. I mean,
25 just kind of in passing.

1 Q. Did the subject of these complaints
2 come up?
3 A. No.
4 Q. Mr. Tice, if I am a customer and a
5 member of BellSouth Select and I signed up
6 under the Key Customer discount program and got
7 say three months free service, and then I
8 decided that I -- let's say in the eighth month
9 I decided that I wanted to leave the program
10 and go to another telecommunications
11 provider -- now I'm aware of the termination
12 provisions of the Key Customer program, but I'm
13 not aware and I would like you to explain to me
14 what, if any, penalties -- I'd like you to
15 explain to me whether or not the customer would
16 have to refund the two months free service that
17 he would have gotten by that time.

18 MR. TURNER: I'm going to object
19 to the use of the words "free service."

20 Aside from that, you can answer
21 the question.

22 BY MR. WALKER:

23 Q. Well, Mr. Tice, you understand what I'm
24 asking?

25 A. Are you asking what would have happened

1 to the points that he had eligible to redeem?

2 Q. No, the points that he had already
3 redeemed.

4 Let's assume that he signed up under
5 the program, he got the first, sixth and 12th
6 months free. And let's assume in the eighth
7 month, he has a change of heart, would he have
8 to reimburse anyone for those two months of
9 free service that he had received?

10 Again, by the two months free service,
11 I mean for the points that he had redeemed
12 equaled two months of service?

13 A. Okay, the answer to -- the question is
14 would he have to forfeit the points that he had
15 already redeemed from BellSouth Select?

16 Q. Would he have to pay back those points
17 that he had already redeemed?

18 A. No.

19 Q. Okay. So he could -- to your
20 knowledge, did that hypothetical ever occur?

21 A. Not to my knowledge.

22 Q. In reading the discovery materials that
23 were delivered yesterday, Mr. Tice, I saw on a
24 number of occasions where BellSouth Select
25 members received --

1 MR. TURNER: Henry, I'm sorry, I
2 hope you understand I'm not trying to be picky,
3 but when you say "that hypothetical," again I
4 don't want to get into a situation where the
5 hearing later down the road, that hypothetical
6 is interpreted differently by you and Mr. Tice.

7 Were you talking about a
8 hypothetical where the customer basically
9 pulled out before getting the last or any
10 installment of the bonus points equal to a
11 month's service, or are you talking about that
12 happening and then Select or someone charging
13 the customer for those points? I hate to be
14 nitpicky, but I just want to make sure we all
15 understand exactly what's being said.

16 MR. WALKER: No, by the
17 hypothetical I meant was he aware of a
18 situation in which a customer had already
19 gotten his month or two or three months of free
20 service and then later pulled out of the
21 program before the expiration of his Key
22 Customer discount plan. Did that hypothetical
23 ever occur?

24 MR. TURNER: Go ahead.

25 THE WITNESS: I'm not aware that

1 that occurred.

2 BY MR. WALKER:

3 Q. Okay. Thank you.

4 And just to clarify, you're saying, Mr.
5 Tice, that if that had occurred, you would not
6 have required the customer to make any refund
7 for the value of those one, two or three months
8 of free service?

9 A. No, the program rules state that
10 customers can redeem the points until they
11 leave the program. So they were -- they had
12 the ability to redeem their points until they
13 left the Select Program.

14 Q. Okay. Thank you.

15 When did BellSouth Select begin sending
16 checks for cash -- let me rephrase it.

17 When did you begin allowing members to
18 redeem their points for cash? And by "cash,"
19 I'm including a check from BellSouth Select,
20 American Express, or anyone, a check that could
21 be cashed. When did you first start doing
22 that?

23 A. We tested American Express checks as a
24 redemption item sometime earlier because -- we
25 tested different redemption items from time to

1 time to see what customers liked as far as
2 rewards. We changed the program in November of
3 2001 to, instead of redeeming for dollars after
4 the unregulated side of the bill, to a Select
5 check because of the potential confusion that
6 customers had and employees had that it could
7 be interpreted as discounts on regulated
8 service. And of course I think you know from
9 what you've probably read, from the very
10 beginning of the program, the discounts or the
11 rewards were to be on the unregulated --

12 Q. I'm sorry, you broke up there.

13 MR. TURNER: He said from the
14 beginning of the program the discounts were to
15 be, or the rewards were to be on the
16 unregulated portion of the BellSouth services.

17 Did I say that correctly, Mr.
18 Tice?

19 THE WITNESS: That's correct.

20 BY MR. WALKER:

21 Q. So, Mr. Tice, you're telling me that
22 you didn't send any checks to BellSouth Select
23 members until November 2001.

24 A. No, sir, I didn't say that.

25 Q. When did you first start allowing

1 members to redeem their points for checks?

2 A. I said that we tested from time to
3 time -- I don't remember the exact date, but we
4 tested from time to time, and one of the tests
5 that we did was a test for customers to redeem
6 their points for an American Express check, and
7 we allowed them to do that, and I would have to
8 go back and look through my documents to see
9 the exact dates of that. But the November date
10 was not the first date that we allowed
11 customers to redeem for a check.

12 Q. We have asked that you give us a line-
13 by-line item of every benefit that a BellSouth
14 Select member in Tennessee has received. And a
15 number of those line items just say "\$25 check
16 from BellSouth." Now, could that be an
17 American Express check?

18 A. It could be.

19 Q. So in other words, there is nothing in
20 this list that would identify an American
21 Express check as being anything different than
22 a check from BellSouth Select?

23 A. I would have to look through the list.
24 I just glanced at it yesterday, but I did not
25 look at it in depth.

1 Q. So today you're offering customers the
2 option of getting checks from BellSouth Select?
3 A. That's correct.
4 Q. When we were questioning some of your
5 salespeople, they indicated that it was their
6 understanding that the customer could get a
7 credit that was taken off their BellSouth bill,
8 and that would be the total amount of the bill.
9 Is that the way the program worked in practice?
10 A. No, sir.
11 The program's intent from the very
12 beginning was that the credit would be on the
13 nonregulated or deregulated portion of the
14 customer's bill. That's why customers, to be
15 enrolled in the program, had to have a
16 nonregulated service.
17 Q. I understand that. But let's suppose
18 that a customer's monthly bill was a hundred
19 dollars. And let's assume that \$90 was
20 regulated and \$10 was unregulated. And let's
21 assume a customer had a \$25 credit to apply to
22 that bill. How would it be applied?
23 A. It would be applied to the nonregulated
24 portion of the bill.
25 Q. What happens to the remaining \$15

1 credit?

2 A. By the time the customer earned that
3 much credit there had been much more
4 unregulated service billed to the customer's
5 bill.

6 The theory all along is that the
7 customer's unregulated spends would far exceed
8 any reward that the customer got. So the
9 reward would always apply to the nonregulated
10 portion of the customer's bill.

11 Q. So if I were to examine some quarterly
12 reports for individual Select members, I could
13 see from those reports that the credits were
14 applied only to the unregulated portions of the
15 bill. Is that what you're testifying to?

16 A. You would see that the credits were
17 applied to the customer's bill. You would also
18 see that the accounting for those rewards were
19 applied to the nonregulated accounts at
20 BellSouth.

21 Q. That's not my question. My question
22 is, would I see on the customer's bill that the
23 credit was applied only to the nonregulated
24 portion of the bill? And we're going to get --
25 or we're going to request copies of customer

1 bills, and I want you to tell me what that's
2 going to show.

3 Is it going to show a discount on the
4 total bill or is it going to show a discount
5 just on the nonreg portion of the bill?

6 MR. TURNER: Henry, I just want to
7 make sure I'm clear. You're not talking about
8 the theory, you're not talking about the
9 accounting, you're talking about an entry that
10 will actually appear on an end user's bill?

11 MR. WALKER: Yes. It's my
12 understanding, Patrick, that on a quarterly
13 basis customers received an accounting of how
14 many points they had and what the points would
15 be redeemed for. They would also of course get
16 bills where the credit would appear on the bill
17 for one purpose or another. And that's what
18 I'm talking about, from the customer's
19 perspective is it going to show a credit on the
20 total bill or just on the nonreg portion of the
21 bill?

22 THE WITNESS: If the customer
23 redeemed their points for the dollars off the
24 bill, it would show up on the bill as a
25 BellSouth Select reward on the Other Charges

1 and Credits page. So say for \$10 it would show
2 up on the Other Charges and Credits page as
3 BellSouth Select reward, and that \$10 would be
4 subtracted from the total bill.

5 BY MR. WALKER:

6 Q. Thank you. A few more questions. A
7 couple more questions, then I want to take a
8 quick break.

9 Mr. Tice, what does the Welcome Back
10 program mean to you?

11 A. Nothing.

12 Q. Okay. Well, under the program that you
13 and I discussed earlier where BellSouth Select
14 was linked with the Key Customer discount
15 program, was a customer able to earn bonus
16 points -- let me rephrase this? Were bonus
17 points awarded only to customers who brought a
18 service back to BellSouth?

19 A. Are you talking about the program where
20 Small Business wanted to give Select points for
21 customers they won back?

22 Q. Yes.

23 A. That particular program?

24 Q. Yes.

25 A. Those customers --

1 MR. TURNER: I want to be sure
2 what "that particular program" is. Is that the
3 same program as the one that has been
4 characterized as three months free or are the
5 two of you talking about different things?

6 MR. WALKER: You're correct,
7 Patrick.

8 MR. TURNER: The three months
9 free?

10 MR. WALKER: Right.

11 BY MR. WALKER:

12 Q. Did bonus points awarded under the
13 three months free program apply only in
14 win-back situations? Could an existing
15 BellSouth customer, in other words, get the
16 three months free?

17 A. I assume they could have if they asked
18 for it.

19 In that particular program it is my
20 understanding it was targeted to customers that
21 Small Business was trying to win-back.

22 Q. Did that program have a name?

23 A. I'm not aware of a name. I'm aware
24 that Small Business asked BellSouth Select that
25 they wanted to give bonus points in conjunction

1 with their Win-Back program, but I'm not aware
2 of, you know, a program name.

3 Q. Again, just to refresh your recol-
4 lection, you've not heard of the Welcome Back
5 program in connection with this particular
6 offering?

7 A. No, sir.

8 Q. Okay. Were bonus points also awarded
9 in connection with the Full Circle program?

10 A. I'm not familiar with the Full Circle
11 program.

12 Q. All right.

13 MR. WALKER: Patrick, we may be
14 just about through. I'd like to take about a
15 five-minute break.

16 MR. TURNER: All right.

17 MR. WALKER: Thank you.

18 (Brief recess.)

19 MR. WALKER: Thank you, Mr. Tice.

20 MR. ALLEN: Are we ready to start
21 back?

22 MR. WALKER: Yes.

23 **E X A M I N A T I O N**

24 BY MR. ALLEN:

25 Q. Mr. Tice, my name is Chris Allen, and

1 I'm with the Consumer Advocate Protection
2 Division of the Attorney General's Office, and
3 I have just a few questions for you.

4 Before I start, let me say this, that I
5 have been conferring with my colleagues so I
6 may have missed your answers to some of the
7 questions, and so some of the questions I ask
8 you may have already answered. And if so, just
9 let me know.

10 A. Okay.

11 Q. The first question is, when did -- we
12 talked about your involvement with Select, the
13 BellSouth Select, Inc., and that you assumed
14 the position of president around February of
15 '99.

16 Were both the Small Business or the
17 BellSouth business Select Program and the
18 residential program already under way at that
19 point?

20 A. No. No, it was my job to develop both
21 programs.

22 Q. Could you give me an approximate date
23 when each of those programs started?

24 A. The Small Business program started in
25 February of '99 on a trial basis in five of our

1 markets; and the consumer program would have
2 been in development then, and I think we mailed
3 the information to customers probably in the
4 March, late March, April time frame.

5 Q. March of '99?

6 A. Yes.

7 Q. If you wouldn't mind could you just
8 give me a brief description of both the
9 business Select Program which applied to small
10 businesses and then the residential program
11 which we really haven't talked that much about
12 today?

13 A. The business program is what we refer
14 to as a "hard rewards" program. That is, say,
15 similar to a Frequent Flier program.

16 Customers who enroll in the program --
17 and we have had different levels of -- you
18 know, different criteria for enrollment as
19 we've rolled along.

20 But right now customers who have a
21 Small Business spend of a hundred dollars a
22 month or a BAPCO spend of \$100 a month in
23 nonregulated service are eligible for
24 enrollment. They earn points on their
25 BellSouth spend and those points are accrued.

1 And they get quarterly statements. And then
2 they could redeem those points for various
3 business-related products, including now a
4 check from BellSouth Select.

5 The consumer program was more of what
6 we refer to as a relationship program, and in
7 that program customers did not earn rewards,
8 points, it was more of a communications program
9 giving the customer information about BellSouth
10 products and services and providing some of
11 what we refer to as soft benefits to the
12 customer such as a magazine, telling them about
13 items of interest that they told us they were
14 interested in, and about BellSouth products and
15 services, as well as a dining and retail
16 discount coupon book and several things like
17 that.

18 Q. Mr. Tice, I understand from your prior
19 testimony that the residential program was
20 suspended apparently indefinitely as of the end
21 of last year.

22 Is the Small Business or the business
23 Select Program still in operation?

24 A. Yes.

25 Q. Okay.

1 A. It's in operation. However, we have
2 redesigned the redemption qualifications for
3 the program and effective the first of the year
4 we've implemented a new system where customers
5 cannot redeem points in excess of their total
6 nonregulated spend less their accumulated
7 redemptions. And that's to ensure that only
8 nonregulated dollars are redeemed.

9 Q. Is that effective as of January 1?

10 A. That's correct.

11 Q. Okay.

12 A. We started designing that at the same
13 time we implemented the checks, the BellSouth
14 Select checks, but it's taken several months to
15 get the programming done to have that system in
16 place.

17 Q. Okay.

18 A. But that will be reflected on
19 customers' first quarterly statement, and also
20 we notified all customers of the program
21 changes, in December.

22 Q. Now, speaking to the BellSouth business
23 Select Program on the Small customers, when you
24 previously gave an estimate of a hundred
25 thousand members, did that relate -- that

1 related solely to the Small Business program,
2 did it not?

3 A. That's correct.

4 Q. On the flip side of that, do you have
5 any idea how many Small Business customers
6 BellSouth has that are not enrolled in the
7 Small Business program?

8 MR. TURNER: Regionally or in
9 Tennessee?

10 MR. ALLEN: Thank you, Patrick.

11 BY MR. ALLEN:

12 Q. Just in Tennessee.

13 A. I wouldn't know in Tennessee.
14 Regionally, I can give you an estimate
15 regionally.

16 Q. That's great.

17 A. It's somewhere between 1.2 and 1.5
18 million, all business customers.

19 MR. TURNER: Chris, can we just
20 clarify, is that a total of 1.2 or 1.5 Small
21 Business customers regionally, or is that a
22 total of Small Business customers regionally
23 that are not Select members?

24 THE WITNESS: I'm sorry, that
25 would be Small Business customers regionally.

1 BY MR. ALLEN:

2 Q. So that would be a total, it would

3 include both those that are members and are

4 nonmembers, right?

5 A. That's correct.

6 Q. Thanks for that clarification.

7 How often -- and this speaks to the

8 BellSouth Small Business program. How do you

9 track when a Small Business customer becomes

10 eligible for that program?

11 A. On a quarterly or something like that

12 basis, we would get a file from Small Business

13 and mark the customers that are eligible for

14 the program.

15 Q. Okay.

16 A. It would be on an ongoing basis, we

17 would refresh the file so that customers that

18 now have a hundred dollars in spend in a nonreg

19 service, we would mark them as being eligible

20 for the program, or customers that maybe their

21 spend had fallen below the criteria, they would

22 be taken off the eligible list.

23 Q. Mr. Tice, is my understanding correct

24 that when you speak of \$100 you're talking

25 about the average over a quarter?

1 A. No, it would be a hundred dollars a
2 month.

3 Q. Okay.

4 A. In either BellSouth spend or in
5 BellSouth Advertising and Publishing spend.

6 Q. Okay. And once you determine that a
7 customer qualifies, do you contact him or her
8 or the business concerning enrolling them in
9 the program, or how does that work?

10 A. The current procedure would be if the
11 customer calls us for any reason, we would let
12 them -- make them aware that -- we would invite
13 them into the program.

14 Q. But the customer has to take the first
15 step?

16 A. Right now. We've had, you know,
17 different scenarios in the past, but the
18 current method of enrollment was when the
19 customer contacted.

20 Q. And how long has that been the case,
21 sir?

22 A. For quite some time, since very early
23 in the program.

24 Q. Okay. Is there any way in advance of
25 qualifying for the business Select Program that

1 a customer would know about the program? The
2 reason why I ask is because I seem to recall
3 some reference to a website and that the
4 business Select Program is mentioned on the
5 website.

6 A. Right.

7 Q. Is that correct? So they could
8 presumably find out about it from that.

9 Is there any other avenue through which
10 they could find out about the business Select
11 Program?

12 A. They could find out through word of
13 mouth from other Small Business customers or
14 through the BellSouth Select website.

15 Q. Okay. Next, Mr. Walker talked about
16 the bonus points in regard to the 2001 Key
17 Business discount program and the offer that,
18 at least by some, has been characterized as a
19 free service.

20 What part does BellSouth Select, Inc.,
21 play in determining when bonus points may be
22 awarded? In other words, do you have to --
23 does Scott Johnson with Small Business Services
24 or somebody with Small Business Services come
25 up with an idea and then float that to you, or

1 exactly how does that work?

2 A. That's correct.

3 Q. Okay.

4 A. Small Business would come and float an
5 idea that they would like to do a certain
6 program and use Select points.

7 Q. Okay. And do you have a budget for
8 that purpose? A budget of the total amount of
9 Select or bonus points that could be conferred
10 within a given period of time, and you have to
11 operate within that budget?

12 A. I have a budget for the Select Program
13 in general that I had to stay within that
14 budget.

15 Q. And you would have to stay within that
16 budget for all things, including the bonus
17 point awards; right?

18 A. Correct.

19 Q. Okay. Who has the final decision, to
20 the extent you know about, whether or not bonus
21 points are awarded?

22 A. Select would.

23 Q. Okay. Could you tell me, sir, to the
24 best of your recollection in what other
25 instances -- other than the three months of

1 service that we've talked about, in what other
2 instances bonus points were awarded?

3 A. We have awarded bonus points for
4 anniversary dates, like an anniversary thank
5 you, we've awarded them for the purchase of
6 nonregulated products from BellSouth, you know,
7 on our quarterly promotions. There has been
8 bonus points or points awarded for customer
9 service adjustments, if a customer was unhappy
10 for some reason, there have been some bonus
11 points awarded for that reason.

12 Q. Can you give me an idea, first, who
13 makes the decisions when those are awarded?

14 A. Select -- well, let's say the team in
15 general makes the decisions on the points for
16 the products and anniversary bonuses and things
17 like that.

18 Q. Who is included in the team, sir?

19 A. That would be BellSouth Select,
20 BellSouth Small Business.

21 Q. Okay.

22 A. And BellSouth Advertising and
23 Publishing.

24 Q. So, really, it's the team that makes
25 the decision?

1 A. Right.

2 Q. Do you know, sir, if Scott Johnson is
3 still with Small Business Services?

4 MR. TURNER: Chris, let me
5 interrupt real quick.

6 I just want to make sure, when you
7 say it's the team that makes the decision about
8 bonus points, are you talking about in general
9 whether bonus points would be awarded for these
10 types of things or on an individual basis, like
11 for the customer service adjustments? If
12 you're distinguishing between those two, you
13 probably need to ask them separately.

14 BY MR. ALLEN:

15 Q. Okay, generally, sir, is it the team
16 that makes the decision on the award of bonus
17 points?

18 A. The team makes the decision that bonus
19 points will be awarded. Like I was explaining,
20 like for products, nonregulated products or for
21 anniversary or whatever, if a bonus point would
22 be awarded for say a service adjustment or
23 something like that, that would be the Small
24 Business manager that would make that decision.

25 Q. In that case is there an approval

1 amount or a ceiling on the number of points to
2 be awarded?

3 A. They would get approval within their
4 hierarchy of command for the amount of points
5 issued.

6 Q. For an example, with current
7 anniversary date where it's deemed that a bonus
8 point should be awarded, can you give me an
9 example of how many bonus points may be
10 awarded?

11 A. For example, maybe a month -- you know,
12 like a month bonus point. If the customer's
13 billing was a hundred dollars a month, we might
14 give them a hundred off, you know, a hundred
15 extra points at their anniversary date,
16 something like that. I'm not saying that was
17 the case, but I mean, that's an example.

18 Q. Just three more questions, sir.

19 Mr. Tice, is Mr. Scott Johnson still
20 with Small Business Services?

21 A. Yes.

22 Q. Do you recall speaking with anyone else
23 at Small Business Services, besides Scott
24 Johnson, with regard to the Select business
25 program?

1 A. The program in general or the -- or the
2 Win-Back program?

3 Q. For the program in general.

4 A. Yes.

5 Q. Did you speak with anybody in addition
6 to Mr. Johnson with regard to the Win-Back
7 program?

8 A. Not before the issue surfaced in
9 Tennessee.

10 Q. And do you recall when that would have
11 been?

12 A. It would have been after the inquiry
13 started. I would have conversations with some
14 of the Small Business directors.

15 MR. TURNER: Chris, when the issue
16 surfaced in Tennessee -- can I ask him a
17 question? I just want to clarify what he meant
18 by that.

19 MR. ALLEN: Go ahead, Patrick.

20 MR. TURNER: Are you talking about
21 when the complaints were filed in Tennessee?

22 THE WITNESS: Yes. I would have
23 no reason to talk with them about the bonus
24 points before that time. I had no reason to
25 know that there was any concern about them.

1 MR. TURNER: Thanks, Chris.
2 MR. ALLEN: Thank you, Patrick.
3 BY MR. ALLEN:
4 Q. One last question for you, Mr. Tice.
5 What is the Win-Back program?
6 A. Would you like what I think the
7 Win-Back program is?
8 Q. To the extent that you feel comfortable
9 answering the question, yes.
10 A. My understanding is the Win-Back
11 program is a program where we contact -- we,
12 BellSouth, or BellSouth Small Business contact
13 customers who recently left us and asked them
14 to come back to us for their communications
15 service.
16 MR. ALLEN: Okay, thank you, Mr.
17 Tice, that's it.
18 THE WITNESS: Thank you.
19 MS. EDWARDS: Hello, Patrick, this
20 is Nanette Edwards.
21 Mr. Tice, I have just a few
22 follow-up questions.
23 THE WITNESS: Okay.
24
25

1 E X A M I N A T I O N

2 BY MS. EDWARDS:

3 Q. I believe in answer to a question asked
4 by Mr. Allen, he asked the question did you
5 work with anyone else on the BellSouth Select
6 program in general with Small Business. In
7 other words, have you worked with anyone other
8 than Mr. Scott Johnson. And I believe I
9 understood your answer to be yes?

10 A. That's correct.

11 Q. Could you say specifically -- and I
12 recognize that the program has been going on
13 since February or March of 1999. Could you
14 give me an idea of who you've worked with?

15 MR. TURNER: You faded out on us
16 Ms. Edwards.

17 BY MS. EDWARDS:

18 Q. I'm sorry. Could you give me the names
19 of some people in Small Business that you
20 worked with?

21 A. Yes. From time to time I have had
22 conversations with Mr. Don Livingston and Brent
23 Mlott.

24 Q. Have you ever had a conversation with
25 Mr. Scobey, Mr. David Scobey or his

1 predecessor?

2 A. At one time we had an annual review
3 where we met with Mr. Scobey and Mr. Scobey's
4 predecessor and gave them a readout of how the
5 program was doing. But that would have been
6 the only contact I have had with Mr. Scobey or
7 Mr. Scobey's predecessor.

8 Q. Who was Mr. Scobey's predecessor?

9 A. I can't remember at this time. I might
10 can remember before the conversation is over,
11 and I'll be glad to tell you.

12 Q. When you started back, the program
13 started back in 1999, who was the president of
14 Small Business at that time? Do you recall?

15 A. That was Scobey's predecessor, and I'm
16 sorry, I have just had a brain malfunction here
17 and I can't remember his name. Oh, I know: It
18 was Joe Baker.

19 Q. Is he still at BellSouth, to your
20 knowledge?

21 A. I'm sorry?

22 Q. Is Mr. Baker still employed at
23 BellSouth Telecommunications?

24 A. To my knowledge, he is not.

25 Q. Do you recall when Mr. Scobey started

1 at BellSouth Telecommunications and you started
2 to work with him?

3 MR. TURNER: Ms. Edwards, are you
4 talking about in his position as president of
5 Small Business Service or just in general?

6 MS. EDWARDS: Just in general to
7 whatever he can recall, if he recalls when
8 Mr. Scobey got into that position as president.

9 THE WITNESS: I don't recall when
10 Mr. Scobey got into that position. It has been
11 recently, but I have never worked with
12 Mr. Scobey.

13 BY MS. EDWARDS:

14 Q. Okay. Other than having that annual
15 review, you mean? I thought I understood that
16 you said you did have like one brief annual
17 review with Mr. Scobey.

18 A. That's correct. I had -- we had a
19 review with Mr. Baker when he was president of
20 Small Business. And after Mr. Scobey assumed
21 those responsibilities, we had a briefing with
22 Mr. Scobey to give him a status on how the
23 program was doing.

24 Q. Do you recall when that briefing took
25 place?

1 A. I don't. I would have to go back and
2 look at my notes.

3 Q. Would you say like 2001, 2000?

4 A. It would have been 2001.

5 Q. Okay. And prior to that, the only
6 other briefing you would have had would have
7 been with Mr. Baker?

8 A. Correct. And again, the briefings were
9 limited to a status on the program results.

10 Q. Okay. Speaking of the program results,
11 would you characterize in your briefings to
12 Mr. Baker and later to Mr. Scobey as -- that
13 this program is successful?

14 A. Yes.

15 Q. There were some questions about
16 business versus residential, and I understand
17 that there is a difference between the two
18 programs. One was for business, it was an
19 actual point program, whereas for residential,
20 I think you put it in the context of a soft
21 program or soft rewards program. Correct?

22 A. A soft-relation program.

23 Q. My question is, it's also my
24 understanding that the residential program
25 ended in December of 2001. Correct?

1 A. I'm sorry, you broke up.

2 Q. It's my understanding that the
3 residential program was discontinued in
4 December of 2001?

5 A. That's correct.

6 Q. Can you explain -- I guess my question
7 is -- why was it discontinued?

8 MR. TURNER: Asked and answered.
9 But you can reanswer it.

10 THE WITNESS: It was discontinued
11 because the Consumer Marketing Division did not
12 feel that it was valuable enough to continue.

13 BY MS. EDWARDS:

14 Q. Okay. When you say not valuable enough
15 to continue, is it because there is less compe-
16 tition in the residential market as opposed to
17 the business market?

18 A. That's part of it, yes.

19 Q. Earlier there was an -- I believe
20 Mr. Allen asked you a question about -- well,
21 actually I've forgotten what his question was
22 specifically. But I think your reply was that
23 beginning this year in 2002 there was some sort
24 of system change to ensure that the value of
25 these points did not exceed the dollar value

1 spent by the customer on unregulated services.
2 Did I say that correctly?
3 A. Yes.
4 Q. So would it be fair to say that prior
5 to January of 2002 it is possible that the
6 credit could be in excess of nonregulated
7 spending?
8 A. If the intent of the program --
9 MR. TURNER: I'm going to object.
10 And seek a clarification.
11 Are you talking about in the
12 aggregate or at the individual customer bill
13 level?
14 BY MS. EDWARDS:
15 Q. At the individual customer billing
16 level?
17 A. The intent of the program from the very
18 beginning is that the rewards would not exceed
19 the total nonregulated billing for the
20 customer. But on a customer-by-customer basis
21 there is a chance that it could and that's why
22 we implemented these changes in the program, to
23 ensure that it could not.
24 Q. Have you identified any specific
25 instances where it did exceed?

1 A. On a customer-by-customer basis?

2 Q. Yes, sir.

3 A. No. We've looked at it on an aggregate
4 basis.

5 MS. EDWARDS: Patrick, I'm almost
6 done. Just give me one second to kind of check
7 through and make sure I haven't missed any
8 questions.

9 MR. TURNER: Just as a show of
10 mercy to us here, can we put you on hold and
11 take a quick health break?

12 MS. EDWARDS: Oh, absolutely.

13 (Brief recess.)

14 BY MS. EDWARDS:

15 Q. I just have one follow-up question and
16 then I'm done.

17 When did the BellSouth Select website
18 become available?

19 A. I don't remember the exact date, but it
20 was shortly after program rollout in 1999.

21 Q. Is there a link between BellSouth
22 Telecommunications, Inc.'s website to BellSouth
23 Select's website?

24 A. I believe there is, but I'm not
25 positive.

1 MS. EDWARDS: That's all I have.

2 MR. TURNER: Folks, what I'm going
3 to do is the same thing as yesterday, I'll ask
4 Mr. Tice to leave the room and Bert and I will
5 go through some notes, and then we'll pull him
6 back in and ask follow-ups, if that's okay with
7 y'all.

8 MR. WALKER: Okay.

9 MR. TURNER: You all hold on, and
10 it should be about three or four minutes.

11 (Brief respite.)

12 **E X A M I N A T I O N**

13 BY MR. TURNER:

14 Q. Mr. Tice, I'm Patrick Turner, and I
15 have a few follow-up questions for you. I'm
16 going to move the phone a little more between
17 us here.

18 Mr. Tice, you mentioned that you're in
19 the transition into a new job. Do you remember
20 that?

21 A. That's correct.

22 Q. Have you been doing any daily
23 responsibilities in that new job recently?

24 A. Yes.

25 Q. When did you begin doing daily

1 responsibilities in that new job?

2 A. January 1st.

3 Q. Would you describe for us the level of
4 day-to-day hands-on activity that you had with
5 BellSouth Select since you knew you were going
6 to the new job as compared to your day-to-day
7 hands-on activity in Select prior to learning
8 that you would have your new job?

9 A. I have not been nearly as involved in
10 the day-to-day activity of Select since I've
11 started my new job, as I was before.

12 Q. Mr. Tice, I certainly appreciate the
13 fact that your successor has not been
14 officially named, and we don't want to suggest
15 on the record that there is a final decision.

16 But has there been talk of who most
17 likely will succeed you at BellSouth Select,
18 Inc., as president?

19 A. Most likely it would be Jeffery White.

20 Q. You mentioned in response to some
21 questions that Dick Anderson was aware of the
22 existence of the Select Program. Do you recall
23 that?

24 A. Yes.

25 Q. Has Dick Anderson at any point in time

1 had any day-to-day hands-on activity or
2 involvement in the Select Program?

3 A. No.

4 Q. Same question with regard to
5 Mr. Scobey? At any point in time has
6 Mr. Scobey had any day-to-day hands-on active
7 involvement in the Select Program?

8 A. Not my knowledge.

9 Q. The same question for Mr. Scobey's
10 predecessor, Mr. Baker?

11 A. Not to my knowledge.

12 Q. And the same question for a person who
13 was listed as a possible deponent at one time,
14 Ms. Krista Tillman?

15 A. Not to my knowledge.

16 Q. You also mentioned a gentleman by the
17 name of Mr. Pate, I believe.

18 Does Mr. Pate or has he at any time had
19 any day-to-day active involvement in the
20 running of the Select Program?

21 A. No, he has not.

22 Q. You mentioned some changes in the
23 redemption mode going forward, in response to
24 some of the questions; do you recall that?

25 A. Yes.

1 Q. I want you to assume for the purposes
2 of this question that I am a Select member
3 today, a small business Select member, okay?
4 A. Okay.
5 Q. And let's assume that today,
6 January 16th, I have accumulated let's say
7 1,000 Select bonus points and I call up and I
8 say, I'd like to -- or I attempt to redeem
9 regardless of the mode of which -- whether it's
10 through the Web or call or whatever, I want to
11 redeem those 1,000 points for something that I
12 would be entitled to under the Select Program.
13 If I were to do that today, what would happen?
14 A. You couldn't redeem today. We've
15 suspended redemptions until February 1st until
16 we have the systems in place to ensure that
17 your nonregulated spend is equal to the amount
18 that you want to redeem.
19 Q. And when you say -- let's start with
20 that, the amount that you want to redeem.
21 Are you talking about the number of
22 points or the dollar value of those points?
23 A. The dollar value of the points.
24 Q. And when you talk about the total
25 amount of unregulated spend, are you talking

1 about the total amount of unregulated spend on
2 the bill to which that credit will appear or
3 are you talking about something else?

4 A. I'm talking about the -- I'm talking
5 about something else. I'm talking about the
6 accumulated nonregulated spends you have had as
7 a customer since you enrolled in the program.

8 Q. "The program" being the Select Program?

9 A. Yes.

10 Q. Just to clarify: When I attempt to
11 redeem that thousand points today, is it that I
12 can never redeem that thousand points or is it
13 that redemption will not be applied until the
14 system is ready to make that check?

15 A. Redemption won't be applied until the
16 system is ready to make that check.

17 Q. And that check, I meant comparison of
18 the value of the points to the total unreg-
19 ulated spend. Is that what you understood me
20 to mean?

21 A. That's correct.

22 Q. And I believe, just to clarify on the
23 formula, you said it was the total -- tell me
24 this: The total amount that I can -- the
25 dollar value of points that I could redeem at a

1 given point in time once the systems are in
2 effect, what is that limited by?

3 A. Limited to your accumulated nonreg-
4 ulated spend minus any redemptions you had.

5 Q. Okay. Is that true regardless of --
6 let me ask you this: That's true, obviously,
7 with just what I'm going to call plain old
8 Select points; right?

9 A. Right.

10 Q. If I wanted to redeem bonus points that
11 I had accumulated under the -- what has been
12 characterized as three months of free service
13 offer, would the same restrictions apply?

14 A. Yes, apply to any points issued by
15 Select.

16 Q. Does it also apply regardless of
17 whether I wanted to redeem it for a product or
18 a check? In other words, is it the same
19 restriction regardless of the manner in which I
20 elect to redeem my points?

21 A. Yes.

22 Q. With regard to the Key Select
23 combination offering that some have
24 characterized as involving an offer of free
25 service, you were asked whether the bonus

1 points were awarded under that program only to
2 customers who brought services back to
3 BellSouth. Do you recall that?

4 A. Yes.

5 Q. Remind me what your answer was.

6 A. I said -- I believe I said that they
7 were awarded to customers -- only to customers
8 who brought their business back to BellSouth.

9 Q. Was it Select, Inc., your shop, that
10 made the determination of who bonus points
11 would be rewarded to in that scenario or would
12 it be someone on the Small Business side of the
13 house, BST side of the house?

14 A. It would have been on the BST side of
15 the house. BST gave us the customers that we
16 were to apply that formula to.

17 Q. If BST had given you a customer that
18 was not bringing service back to BellSouth
19 under that program, would you have applied the
20 bonus points to that customer?

21 A. Yes.

22 Q. I have some follow-up questions when
23 you were talking about things like anniversary
24 points and things of that nature and who
25 decides how much to award and that type of

1 thing. Let's talk about things like the
2 anniversary date, just as an example.

3 Once the decision had been made to
4 award bonus points on the anniversary date of
5 Select customers, did Small Business Service
6 have the discretion to determine that one
7 customer would get X number of points on his
8 anniversary date and another would get a
9 different amount of points or did the same
10 formula for determining anniversary points, so
11 to speak, apply to all customers?

12 A. The same formula applied to all
13 customers.

14 Q. You also mentioned discretionary use of
15 bonus points for things like customer service
16 adjustments. Do you remember that?

17 A. Yes.

18 Q. With regard to the customer service
19 adjustment type of discretionary bonus points,
20 did SBS people have discretion as to which
21 customers got how much bonus points for that?

22 A. Yes.

23 MR. WALKER: You said SBS?

24 MR. TURNER: Yes, the
25 telecommunications side of the house.

1 MR. WALKER: Okay.

2 BY MR. TURNER:

3 Q. You also mentioned budgets or bonus
4 points, and I guess my question is, basically,
5 did the budget basically limit the number of
6 discretionary bonus points for things like
7 customer service adjustments or did it limit
8 the anniversary-date type bonus points where
9 everybody got the same formula applied?

10 A. It limited both.

11 There was a pool of points, bonus
12 points awarded to the -- to Small Business for
13 discretionary Small Business issuance to
14 customers for customer service adjustments, so
15 on and so forth. And that was included in the
16 annual budget for points. And, you know,
17 regular points and bonus points.

18 Q. Mr. Tice, there was a point at which
19 Mr. Walker was asking you about conversations
20 or memos with a gentleman named David Richards
21 who was an attorney with BellSouth. Do you
22 remember that?

23 A. Correct.

24 Q. And I believe you told us that
25 Mr. Richards no longer is an attorney with

1 BellSouth, he may be an attorney with Cingular.
2 Right?
3 A. Right.
4 Q. Do you remember about how long it has
5 been since Mr. Richards ceased performing the
6 function he was performing at the time that you
7 were talking about back in 1999?
8 A. It was shortly after.
9 Q. I believe you were asked whether or not
10 after the late 1999 time period you continued
11 to have conversations with Mr. Richards or had
12 documents with Mr. Richards about the Select
13 Program, and your answer was no, that did not
14 continue. Did I recall that right?
15 A. That's correct.
16 Q. I don't want any of the substance of
17 the conversations, but did you at any point
18 beyond late 1999 have conversations with any
19 attorneys with regard to the Select Program?
20 A. Yes.
21 Q. Mr. Tice, when did you first learn
22 about -- generally when did you first learn
23 that you would be leaving BellSouth Select as
24 president, and going to your new job?
25 A. Mid-December. I had been advised

1 several months before then that there was a
2 possibility. I requested about a year ago when
3 I had my annual review that if an opportunity
4 ever became available that for personal reasons
5 I would like to be transferred to Birmingham,
6 and about three months ago I was told that
7 there was a possibility that something could
8 happen. And in mid-December I was told that
9 there would be a position in Birmingham and
10 that I would be transferred there effective
11 January the 1st.

12 Q. Mr. Tice, finally, with regard -- I
13 just want to clarify about the outbound
14 telemarketing of the Select Program in general.

15 And my question simply is, is it your
16 testimony that there is no outbound
17 telemarketing at all of the Select Program in
18 general today or that you're not aware of any?

19 A. Not aware of any at this time.

20 From time to time there has been some
21 outbound telemarketing, but at this time I'm
22 not aware of any.

23 MR. TURNER: I believe that's all
24 I have.

25 MR. WALKER: Does that mean we can

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go?


MR. TURNER: Far as I'm concerned.

MR. WALKER: See you guys later.

MR. TURNER: Thank you all.

FURTHER DEPONENT SAITH NOT.

SWORN to before me when taken,
January 16, 2002



James L. Vowell
Notary Public
State of Tennessee At Large
My Commission Expires: 11/30/02